

**Executive Summary – Enforcement Matter – Case No. 50755**  
**Kashi Enterprises, Inc. dba Rudys Store 10**  
**RN102378023**  
**Docket No. 2015-0977-PST-E**

**Order Type:**

1660 Agreed Order

**Findings Order Justification:**

N/A

**Media:**

PST

**Small Business:**

Yes

**Location(s) Where Violation(s) Occurred:**

Rudys Store 10, 403 South Southeast Loop 323, Tyler, Smith County

**Type of Operation:**

Convenience store with retail sales of gasoline

**Other Significant Matters:**

Additional Pending Enforcement Actions: No

Past-Due Penalties: No

Other: N/A

Interested Third-Parties: None

**Texas Register Publication Date:** November 6, 2015

**Comments Received:** No

***Penalty Information***

**Total Penalty Assessed:** \$7,875

**Amount Deferred for Expedited Settlement:** \$1,575

**Amount Deferred for Financial Inability to Pay:** \$0

**Total Paid to General Revenue:** \$252

**Total Due to General Revenue:** \$6,048

Payment Plan: 24 payments of \$252 each

**Supplemental Environmental Project ("SEP") Conditional Offset:** \$0

Name of SEP: N/A

**Compliance History Classifications:**

Person/CN - High

Site/RN - N/A

**Major Source:** No

**Statutory Limit Adjustment:** N/A

**Applicable Penalty Policy:** April 2014

***Investigation Information***

**Complaint Date(s):** N/A

**Complaint Information:** N/A

**Date(s) of Investigation:** May 18, 2015

**Date(s) of NOE(s):** June 25, 2015

**Executive Summary – Enforcement Matter – Case No. 50755**  
**Kashi Enterprises, Inc. dba Rudys Store 10**  
**RN102378023**  
**Docket No. 2015-0977-PST-E**

***Violation Information***

1. Failed to provide corrosion protection for the underground storage tank ("UST") system [30 TEX. ADMIN. CODE § 334.49(a)(1) and TEX. WATER CODE § 26.3475(d)].
2. Failed to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring) [30 TEX. ADMIN. CODE § 334.50(b)(1)(A) and TEX. WATER CODE § 26.3475(c)(1)].
3. Failed to maintain UST records and make them immediately available for inspection upon request by agency personnel [30 TEX. ADMIN. CODE § 334.10(b)(1)(B)].

***Corrective Actions/Technical Requirements***

**Corrective Action(s) Completed:**

N/A

**Technical Requirements:**

The Order will require the Respondent to:

- a. Immediately, begin maintaining all UST records and ensure they are made immediately available for inspection upon request by agency personnel.
- b. Within 30 days:
  - i. Install a corrosion protection system and test the system; and
  - ii. Implement a release detection method for all USTs at the Facility.
- c. Within 45 days, submit written certification to demonstrate compliance with a. and b.

***Litigation Information***

**Date Petition(s) Filed:** N/A

**Date Answer(s) Filed:** N/A

**SOAH Referral Date:** N/A

**Hearing Date(s):** N/A

**Settlement Date:** N/A

**Executive Summary – Enforcement Matter – Case No. 50755**  
**Kashi Enterprises, Inc. dba Rudys Store 10**  
**RN102378023**  
**Docket No. 2015-0977-PST-E**

***Contact Information***

**TCEQ Attorney:** N/A

**TCEQ Enforcement Coordinator:** Tiffany Maurer, Enforcement Division,  
Enforcement Team 6, MC 128, (512) 239-2696; Candy Garrett, Enforcement Division,  
MC 219, (512) 239-1456

**TCEQ SEP Coordinator:** N/A

**Respondent:** Nizamuddin Yousuf, President, Kashi Enterprises, Inc., 5006 Paluxy  
Dr., Tyler, Texas 75703

**Respondent's Attorney:** N/A





## Penalty Calculation Worksheet (PCW)

<b>DATES</b>	<b>Assigned</b>	29-Jun-2015	<b>Screening</b>	30-Jun-2015	<b>EPA Due</b>	
	<b>PCW</b>	26-Aug-2015				

**RESPONDENT/FACILITY INFORMATION**

<b>Respondent</b>	Kashi Enterprises, Inc. dba Rudys Store 10		
<b>Reg. Ent. Ref. No.</b>	RN102378023		
<b>Facility/Site Region</b>	5-Tyler	<b>Major/Minor Source</b>	Minor

**CASE INFORMATION**

<b>Enf./Case ID No.</b>	50755	<b>No. of Violations</b>	3
<b>Docket No.</b>	2015-0977-PST-E	<b>Order Type</b>	1660
<b>Media Program(s)</b>	Petroleum Storage Tank	<b>Government/Non-Profit</b>	No
<b>Multi-Media</b>		<b>Enf. Coordinator</b>	Tiffany Maurer
		<b>EC's Team</b>	Enforcement Team 6
<b>Admin. Penalty \$ Limit Minimum</b>	\$0	<b>Maximum</b>	\$25,000

## Penalty Calculation Section

<b>TOTAL BASE PENALTY (Sum of violation base penalties)</b>	<b>Subtotal 1</b>	\$8,750
---	-------------------	---------

**ADJUSTMENTS (+/-) TO SUBTOTAL 1**

Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.

<b>Compliance History</b>	-10.0%	Reduction	<b>Subtotals 2, 3, &amp; 7</b>	-\$875
---------------------------	--------	-----------	--------------------------------	--------

<b>Notes</b>	Reduction for high performer classification.
--------------	--

<b>Culpability</b>	No	0.0%	Enhancement	<b>Subtotal 4</b>	\$0
--------------------	----	------	-------------	-------------------	-----

<b>Notes</b>	The Respondent does not meet the culpability criteria.
--------------	--

<b>Good Faith Effort to Comply Total Adjustments</b>	<b>Subtotal 5</b>	\$0
--	-------------------	-----

<b>Economic Benefit</b>	0.0%	Enhancement*	<b>Subtotal 6</b>	\$0
-------------------------	------	--------------	-------------------	-----

Total EB Amounts	\$325
Estimated Cost of Compliance	\$8,000

\*Capped at the Total EB \$ Amount

<b>SUM OF SUBTOTALS 1-7</b>	<b>Final Subtotal</b>	\$7,875
-----------------------------	-----------------------	---------

<b>OTHER FACTORS AS JUSTICE MAY REQUIRE</b>	0.0%	<b>Adjustment</b>	\$0
---	------	-------------------	-----

Reduces or enhances the Final Subtotal by the indicated percentage.

<b>Notes</b>	
--------------	--

<b>Final Penalty Amount</b>	\$7,875
-----------------------------	---------

<b>STATUTORY LIMIT ADJUSTMENT</b>	<b>Final Assessed Penalty</b>	\$7,875
-----------------------------------	-------------------------------	---------

<b>DEFERRAL</b>	20.0%	Reduction	<b>Adjustment</b>	-\$1,575
-----------------	-------	-----------	-------------------	----------

Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

<b>Notes</b>	Deferral offered for expedited settlement.
--------------	--

<b>PAYABLE PENALTY</b>	\$6,300
------------------------	---------

Screening Date 30-Jun-2015

Docket No. 2015-0977-PST-E

PCW

Respondent Kashi Enterprises, Inc. dba Rudys Store 10

Policy Revision 4 (April 2014)

Case ID No. 50755

PCW Revision March 26, 2014

Reg. Ent. Reference No. RN102378023

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Tiffany Maurer

## Compliance History Worksheet

## &gt;&gt; Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written notices of violation ("NOVs") with same or similar violations as those in the current enforcement action ( <i>number of NOVs meeting criteria</i> )	0	0%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability ( <i>number of orders meeting criteria</i> )	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government ( <i>number of judgments or consent decrees meeting criteria</i> )	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government ( <i>number of counts</i> )	0	0%
Emissions	Chronic excessive emissions events ( <i>number of events</i> )	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 ( <i>number of audits for which notices were submitted</i> )	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 ( <i>number of audits for which violations were disclosed</i> )	0	0%
Please Enter Yes or No			
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 0%

## &gt;&gt; Repeat Violator (Subtotal 3)

N/A

Adjustment Percentage (Subtotal 3) 0%

## &gt;&gt; Compliance History Person Classification (Subtotal 7)

High Performer

Adjustment Percentage (Subtotal 7) -10%

## &gt;&gt; Compliance History Summary

Compliance  
History  
Notes

Reduction for high performer classification.

Total Compliance History Adjustment Percentage (Subtotals 2, 3, &amp; 7) -10%

## &gt;&gt; Final Compliance History Adjustment

Final Adjustment Percentage \*capped at 100% -10%

Screening Date 30-Jun-2015

Docket No. 2015-0977-PST-E

PCW

Respondent Kashi Enterprises, Inc. dba Rudys Store 10

Case ID No. 50755

PCW Revision March 26, 2014

Reg. Ent. Reference No. RN102378023

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Tiffany Maurer

Violation Number 1

Rule Cite(s)

30 Tex. Admin. Code § 334.49(a)(1) and Tex. Water Code § 26.3475(d)

Violation Description

Failed to provide corrosion protection for the underground storage tank ("UST") system.

Base Penalty \$25,000

## &gt;&gt; Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential	X		

Percent 15.0%

## &gt;&gt; Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0.0%

Matrix Notes

Human health or the environment will or could be exposed to pollutants which would exceed levels that are protective of human health or environmental receptors as a result of the violation.

Adjustment \$21,250

\$3,750

## Violation Events

Number of Violation Events 1

43 Number of violation days

mark only one  
with an x

daily	
weekly	
monthly	
quarterly	X
semiannual	
annual	
single event	

Violation Base Penalty \$3,750

One quarterly event is recommended from the May 18, 2015 investigation date to the June 30, 2015 screening date.

## Good Faith Efforts to Comply

0.0%

Reduction \$0

Before NOE/NOV NOE/NOV to EDPRP/Settlement Offer

Extraordinary		
Ordinary		
N/A	X	(mark with x)

Notes

The Respondent does not meet the good faith criteria for this violation.

Violation Subtotal \$3,750

## Economic Benefit (EB) for this violation

## Statutory Limit Test

Estimated EB Amount \$262

Violation Final Penalty Total \$3,375

This violation Final Assessed Penalty (adjusted for limits) \$3,375

# Economic Benefit Worksheet

**Respondent** Kashi Enterprises, Inc. dba Rudys Store 10  
**Case ID No.** 50755  
**Reg. Ent. Reference No.** RN102378023  
**Media** Petroleum Storage Tank  
**Violation No.** 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
------------------	-----------	---------------	------------	-----	----------------	---------------	-----------

No commas or \$

## Delayed Costs

Equipment	\$6,000	18-May-2015	1-Jan-2016	0.62	\$12	\$250	\$262
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/Construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to install a corrosion protection system and test the system. The date required is the investigation date, and the final date is the estimated date of compliance.

## Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/Equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$6,000

TOTAL

\$262



Screening Date 30-Jun-2015

Docket No. 2015-0977-PST-E

PCW

Respondent Kashi Enterprises, Inc. dba Rudys Store 10

Case ID No. 50755

PCW Revision March 26, 2014

Reg. Ent. Reference No. RN102378023

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Tiffany Maurer

Violation Number 2

Rule Cite(s)

30 Tex. Admin. Code § 334.50(b)(1)(A) and Tex. Water Code § 26.3475(c)(1)

Violation Description

Failed to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring).

Base Penalty \$25,000

## &gt;&gt; Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential	X		

Percent 15.0%

## &gt;&gt; Programmatic Matrix

Falsification			
	Major	Moderate	Minor

Percent 0.0%

Matrix Notes

Human health or the environment will or could be exposed to pollutants which would exceed levels that are protective of human health or environmental receptors as a result of the violation.

Adjustment \$21,250

\$3,750

## Violation Events

Number of Violation Events 1

43 Number of violation days

mark only one  
with an x

daily	
weekly	
monthly	
quarterly	X
semiannual	
annual	
single event	

Violation Base Penalty \$3,750

One quarterly event is recommended from the May 18, 2015 investigation date to the June 30, 2015 screening date.

## Good Faith Efforts to Comply

0.0%

Reduction \$0

Before NOE/NOV NOE/NOV to EDRP/Settlement Offer

Extraordinary		
Ordinary		
N/A	X	(mark with x)

Notes

The Respondent does not meet the good faith criteria for this violation.

Violation Subtotal \$3,750

## Economic Benefit (EB) for this violation

## Statutory Limit Test

Estimated EB Amount \$47

Violation Final Penalty Total \$3,750

This violation Final Assessed Penalty (adjusted for limits) \$3,750

## Economic Benefit Worksheet

**Respondent** Kashi Enterprises, Inc. dba Rudys Store 10  
**Case ID No.** 50755  
**Reg. Ent. Reference No.** RN102378023  
**Media** Petroleum Storage Tank  
**Violation No.** 2

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
No commas or \$							

### Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/Construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)	\$1,500	18-May-2015	1-Jan-2016	0.62	\$47	n/a	\$47

Notes for DELAYED costs

Estimated cost to implement a release detection method for all USTs at the Facility. The date required is the investigation date, and the final date is the estimated date of compliance.

### Avoided Costs

**ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)**

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/Equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$1,500

**TOTAL**

\$47

Screening Date 30-Jun-2015

Docket No. 2015-0977-PST-E

PCW

Respondent Kashi Enterprises, Inc. dba Rudys Store 10

Case ID No. 50755

PCW Revision March 26, 2014

Reg. Ent. Reference No. RN102378023

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Tiffany Maurer

Violation Number 3

Rule Cite(s)

30 Tex. Admin. Code § 334.10(b)(1)(B)

Violation Description

Failed to maintain UST records and make them immediately available for inspection upon request by agency personnel.

Base Penalty \$25,000

## &gt;&gt; Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential			

Percent 0.0%

## &gt;&gt; Programmatic Matrix

Falsification	Major	Moderate	Minor
	X		

Percent 5.0%

Matrix Notes

100% of the rule requirement was not met.

Adjustment \$23,750

\$1,250

## Violation Events

Number of Violation Events 1

43 Number of violation days

mark only one  
with an x

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	
single event	X

Violation Base Penalty \$1,250

One single event is recommended.

## Good Faith Efforts to Comply

0.0%

Reduction \$0

	Before NOE/NOV	NOE/NOV to EDPRP/Settlement Offer
Extraordinary		
Ordinary		
N/A	X	(mark with x)

Notes

The Respondent does not meet the good faith criteria for this violation.

Violation Subtotal \$1,250

## Economic Benefit (EB) for this violation

## Statutory Limit Test

Estimated EB Amount \$16

Violation Final Penalty Total \$1,125

This violation Final Assessed Penalty (adjusted for limits) \$1,125

# Economic Benefit Worksheet

**Respondent** Kashi Enterprises, Inc. dba Rudys Store 10  
**Case ID No.** 50755  
**Reg. Ent. Reference No.** RN102378023  
**Media** Petroleum Storage Tank  
**Violation No.** 3

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
No commas or \$							

## Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/Construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System	\$500	18-May-2015	1-Jan-2016	0.62	\$16	n/a	\$16
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to maintain a record keeping system. The date required is the investigation date, and the final date is the estimated date of compliance.

## Avoided Costs

**ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)**

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/Equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$500

**TOTAL**

\$16

The TCEQ is committed to accessibility.

To request a more accessible version of this report, please contact the TCEQ Help Desk at (512) 239-4357.



## TCEQ Compliance History Report

**PUBLISHED** Compliance History Report for CN601552169, RN102378023, Rating Year 2014 which includes Compliance History (CH) components from September 1, 2009, through August 31, 2014.

**Customer, Respondent, or Owner/Operator:** CN601552169, Kashi Enterprises, Inc. **Classification:** HIGH **Rating:** 0.00

**Regulated Entity:** RN102378023, RUDYS STORE 10 **Classification:** NOT APPLICABLE **Rating:** N/A

**Complexity Points:** N/A **Repeat Violator:** N/A

**CH Group:** 14 - Other

**Location:** 403 S SE LOOP 323 TYLER, TX 75702-8647, SMITH COUNTY

**TCEQ Region:** REGION 05 - TYLER

**ID Number(s):** PETROLEUM STORAGE TANK REGISTRATION REGISTRATION 62690

**Compliance History Period:** September 01, 2009 to August 31, 2014 **Rating Year:** 2014 **Rating Date:** 09/01/2014

**Date Compliance History Report Prepared:** June 30, 2015

**Agency Decision Requiring Compliance History:** Enforcement

**Component Period Selected:** June 30, 2010 to June 30, 2015

**TCEQ Staff Member to Contact for Additional Information Regarding This Compliance History.**

**Name:** Tiffany Maurer

**Phone:** (512) 239-2696

### Site and Owner/Operator History:

- 1) Has the site been in existence and/or operation for the full five year compliance period? YES
- 2) Has there been a (known) change in ownership/operator of the site during the compliance period? YES
- 3) If **YES** for #2, who is the current owner/operator?  
Kashi Enterprises, Inc. OPERATOR since 1/1/2015  
MRP PROPERTIES LLC OWNER since 1/1/1800  
Rudisill Properties, LLC OWNER OPERATOR since 3/1/2013
- 4) If **YES** for #2, who was/were the prior owner(s)/operator(s)?  
Runnin Rudy's, LLC., OPERATOR, 10/30/2004 to 2/28/2013  
Rudys Store #10, LLC, OWNER, 10/30/2004 to 2/28/2013
- 5) If **YES**, when did the change(s) in owner or operator occur? 3/1/2013

### Components (Multimedia) for the Site Are Listed in Sections A - J

**A. Final Orders, court judgments, and consent decrees:** N/A

**B. Criminal convictions:** N/A

**C. Chronic excessive emissions events:** N/A

**D. The approval dates of investigations (CCEDS Inv. Track. No.):**

Item 1 July 18, 2012 (1009942)

**E. Written notices of violations (NOV) (CCEDS Inv. Track. No.):**

A notice of violation represents a written allegation of a violation of a specific regulatory requirement from the commission to a regulated entity. A notice of violation is not a final enforcement action, nor proof that a violation has actually occurred. N/A

**F. Environmental audits:** N/A

**G. Type of environmental management systems (EMSs):** N/A

**H. Voluntary on-site compliance assessment dates:** N/A

**I. Participation in a voluntary pollution reduction program:** N/A

**J. Early compliance:** N/A

**Sites Outside of Texas:** N/A



# TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN  
ENFORCEMENT ACTION  
CONCERNING  
KASHI ENTERPRISES, INC. DBA  
RUDYS STORE 10  
RN102378023**

**§ BEFORE THE  
§ TEXAS COMMISSION ON  
§  
§  
§ ENVIRONMENTAL QUALITY**

## **AGREED ORDER DOCKET NO. 2015-0977-PST-E**

### **I. JURISDICTION AND STIPULATIONS**

On \_\_\_\_\_, the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding Kashi Enterprises, Inc. dba Rudys Store 10 ("Respondent") under the authority of TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, through the Enforcement Division, and the Respondent together stipulate that:

1. The Respondent owns and operates a convenience store with retail sales of gasoline at 403 South Southeast Loop 323 in Tyler, Smith County, Texas (the "Facility").
2. The Respondent's three underground storage tanks ("USTs") are not exempt or excluded from regulation under the Texas Water Code or the rules of the Commission.
3. The Executive Director and the Respondent agree that the Commission has jurisdiction to enter this Agreed Order, and that the Respondent is subject to the Commission's jurisdiction.
4. The Respondent received notice of the violations alleged in Section II ("Allegations") on or about June 30, 2015.
5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by the Respondent of any violation alleged in Section II ("Allegations"), nor of any statute or rule.
6. An administrative penalty in the amount of Seven Thousand Eight Hundred Seventy-Five Dollars (\$7,875) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondent has paid Two Hundred Fifty-Two

Dollars (\$252) of the administrative penalty and One Thousand Five Hundred Seventy-Five Dollars (\$1,575) is deferred contingent upon the Respondent's timely and satisfactory compliance with all the terms of this Agreed Order. The deferred amount will be waived upon full compliance with the terms of this Agreed Order. If the Respondent fails to timely and satisfactorily comply with all requirements of this Agreed Order, including the payment schedule, the Executive Director may require the Respondent to pay all or part of the deferred penalty.

The remaining amount of Six Thousand Forty-Eight Dollars (\$6,048) of the administrative penalty shall be payable in 24 monthly payments of Two Hundred Fifty-Two Dollars (\$252) each. The next monthly payment shall be paid within 30 days after the effective date of this Agreed Order. The subsequent payments shall each be paid not later than 30 days following the due date of the previous payment until paid in full. If the Respondent fails to timely and satisfactorily comply with the payment requirements of this Agreed Order, the Executive Director may, at the Executive Director's option, accelerate the maturity of the remaining installments, in which event the unpaid balance shall become immediately due and payable without demand or notice. In addition, the failure of the Respondent to meet the payment schedule of this Agreed Order constitutes the failure by the Respondent to timely and satisfactorily comply with all the terms of this Agreed Order.

7. Any notice and procedures, which might otherwise be authorized or required in this action, are waived in the interest of a more timely resolution of the matter.
8. The Executive Director and the Respondent agree on a settlement of the matters alleged in this enforcement action, subject to final approval in accordance with 30 TEX. ADMIN. CODE § 70.10(a).
9. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that the Respondent has not complied with one or more of the terms or conditions in this Agreed Order.
10. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.
11. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

## II. ALLEGATIONS

As owner and operator of the Facility, the Respondent is alleged to have:

1. Failed to provide corrosion protection for the UST system, in violation of 30 TEX. ADMIN. CODE § 334.49(a)(1) and TEX. WATER CODE § 26.3475(d), as documented during an investigation conducted on May 18, 2015.



2. Failed to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring), in violation of 30 TEX. ADMIN. CODE § 334.50(b)(1)(A) and TEX. WATER CODE § 26.3475(c)(1), as documented during an investigation conducted on May 18, 2015.
3. Failed to maintain UST records and make them immediately available for inspection upon request by agency personnel, in violation of 30 TEX. ADMIN. CODE § 334.10(b)(1)(B), as documented during an investigation conducted on May 18, 2015.

### **III. DENIALS**

The Respondent generally denies each allegation in Section II ("Allegations").

### **IV. ORDERING PROVISIONS**

1. It is, therefore, ordered by the TCEQ that the Respondent pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and the Respondent's compliance with all the terms and conditions set forth in this Agreed Order resolve only the allegations in Section II. The Commission shall not be constrained in any manner from requiring corrective action or penalties for violations which are not raised here. Administrative penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: Kashi Enterprises, Inc. dba Rudys Store 10, Docket No. 2015-0977-PST-E" to:

Financial Administration Division, Revenue Operations Section  
Attention: Cashier's Office, MC 214  
Texas Commission on Environmental Quality  
P.O. Box 13088  
Austin, Texas 78711-3088

2. It is further ordered that the Respondent shall undertake the following technical requirements:
  - a. Immediately upon the effective date of this Agreed Order, begin maintaining all UST records and ensure they are made immediately available for inspection upon request by agency personnel, in accordance with 30 TEX. ADMIN. CODE § 334.10.
  - b. Within 30 days after the effective date of this Agreed Order:
    - i. Install a corrosion protection system and test the system, in accordance with 30 TEX. ADMIN. CODE § 334.49; and
    - ii. Implement a release detection method for all USTs at the Facility, in accordance with 30 TEX. ADMIN. CODE § 334.50.
  - c. Within 45 days after the effective date of this Agreed Order, submit written certification as described below, and include detailed supporting documentation

including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision Nos. 2.a. and 2.b. The certification shall be notarized by a State of Texas Notary Public and include the following certification language:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations."

The certification shall be submitted to:

Order Compliance Team  
Enforcement Division, MC 149A  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, Texas 78711-3087

with a copy to:

Waste Section Manager  
Tyler Regional Office  
Texas Commission on Environmental Quality  
2916 Teague Drive  
Tyler, Texas 75701-3734

3. The provisions of this Agreed Order shall apply to and be binding upon the Respondent. The Respondent is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Facility operations referenced in this Agreed Order.
4. If the Respondent fails to comply with any of the Ordering Provisions in this Agreed Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, the Respondent's failure to comply is not a violation of this Agreed Order. The Respondent shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. The Respondent shall notify the Executive Director within seven days after the Respondent becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
5. The Executive Director may grant an extension of any deadline in this Agreed Order or in any plan, report, or other document submitted pursuant to this Agreed Order, upon a written and substantiated showing of good cause. All requests for extensions by the Respondent shall be made in writing to the Executive Director. Extensions are not effective until the Respondent receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.

6. This Agreed Order, issued by the Commission, shall not be admissible against the Respondent in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.
7. This Agreed Order may be executed in separate and multiple counterparts, which together shall constitute a single instrument. Any page of this Agreed Order may be copied, scanned, digitized, converted to electronic portable document format ("pdf"), or otherwise reproduced and may be transmitted by digital or electronic transmission, including but not limited to facsimile transmission and electronic mail. Any signature affixed to this Agreed Order shall constitute an original signature for all purposes and may be used, filed, substituted, or issued for any purpose for which an original signature could be used. The term "signature" shall include manual signatures and true and accurate reproductions of manual signatures created, executed, endorsed, adopted, or authorized by the person or persons to whom the signatures are attributable. Signatures may be copied or reproduced digitally, electronically, by photocopying, engraving, imprinting, lithographing, electronic mail, facsimile transmission, stamping, or any other means or process which the Executive Director deems acceptable. In this paragraph exclusively, the terms "electronic transmission", "owner", "person", "writing", and "written" shall have the meanings assigned to them under TEX. BUS. ORG. CODE § 1.002.
8. The effective date of this Order is the date it is signed by the Commission. A copy of this fully executed Order shall be provided to each of the parties.

## SIGNATURE PAGE

### TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

Date

  
For the Executive Director


1/7/16  
Date

I, the undersigned, have read and understand the attached Agreed Order. I am authorized to agree to the attached Agreed Order on behalf of the entity indicated below my signature, and I do agree to the terms and conditions specified therein. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

I also understand that failure to comply with the Ordering Provisions, if any, in this order and/or failure to timely pay the penalty amount, may result in:

- A negative impact on compliance history;
- Greater scrutiny of any permit applications submitted;
- Referral of this case to the Attorney General's Office for contempt, injunctive relief, additional penalties, and/or attorney fees, or to a collection agency;
- Increased penalties in any future enforcement actions;
- Automatic referral to the Attorney General's Office of any future enforcement actions; and
- TCEQ seeking other relief as authorized by law.

In addition, any falsification of any compliance documents may result in criminal prosecution.

  
Signature

10/9/15  
Date

Naomi Adlin Yousaf  
Name (Printed or typed)

President  
Title

Authorized Representative of  
Kashi Enterprises, Inc. dba Rudys Store 10

**Instructions:** Send the original, signed Agreed Order with penalty payment to the Financial Administration Division, Revenue Operations Section at the address in Section IV, Paragraph 1 of this Agreed Order.